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April 29, 2008

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

VIA EXPRESS MAIL



RE Docket No AB-398 (Sub-No 7X), *San Joaquin Valley Railroad Company – Abandonment Exemption in Tulare County, CA (Between Strathmore and Jovista)*

Dear Acting Secretary Quinlan,

Enclosed for filing please find the original and 10 copies of Tulare County Economic Development Corporation's Response to Rebuttal in the above referenced matter, on behalf of itself and the Tulare County Association of Governments

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the enclosed self-addressed stamped envelope

Sincerely,

Paul Saldana
President and Chief Executive Officer

Enclosure

cc Tulare County Association of Governments
San Joaquin Valley Railroad
Attorney Louis E. Gitomer

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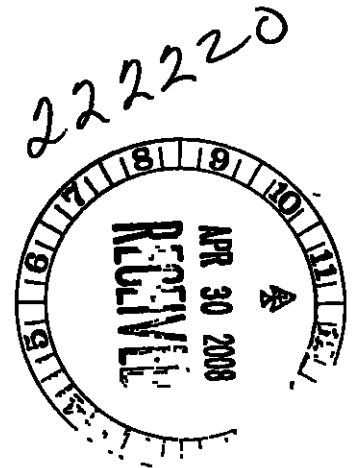
An Accredited Economic Development Organization

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The People to Grow Your Business

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

Docket AB-398 (Sub-No. 7X)



**SAN JOAQUIN VALLEY RAILROAD COMPANY
ABANDONMENT EXEMPTION
IN TULARE COUNTY, CA
(BETWEEN STRATHMORE AND JOVISTA)**

RESPONSE TO REBUTTAL

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RESPONSE TO REBUTTAL

INTRODUCTION

Pursuant to 49 CFR § 1152.25(a)(1) and the Board's decision served March 10, 2008, the Tulare County Economic Development Corporation and Tulare County Association of Governments (jointly referred to as "Tulare County") protested the application for authority to abandon a 30.57 mile rail line in Tulare County, California ("Line"), filed by the San Joaquin Railroad Company ("SJVR") on February 19, 2008. Tulare County's Protest was filed with the Board on March 31, 2008. SJVR, in contravention of Board policies and precedents and without leave to file, filed a Rebuttal to this Protest on April 10, 2008. The Board should not entertain the SJVR Rebuttal as it would effectively extend additional opportunities to SJVR to correct a record it was obligated to make properly when it first filed its Petition for Exemption with the Board. The SJVR Rebuttal, moreover, still fails in demonstrating public convenience and necessity required to permit the proposed abandonment. It also continues to provide inaccurate and misleading data and leave out other vital information that would allow the proper construction of an Offer of Financial Assistance for this line of railroad. The SJVR Rebuttal should, therefore, be rejected as a factor in the Board's deliberations with respect to disposition of the SJVR Petition for Exemption.

RESPONSE AND ARGUMENT

Tulare County submits the following information in response to the SJVR Rebuttal

(1) Tulare County strongly objects to SJVR's motion for leave to rebut its Protest. As the protest of the City of Lindsay and Tulare Frozen Foods in the related Sub No 8X case (see Docket No AB-398, Sub No-8X filing dated March 13, 2008) indicates, this would not only be contrary to previous STB decisions but also give SJVR unfair advantage. Moreover, such an opportunity would reward SJVR for preparing an incomplete and inaccurate Petition for Exemption by potentially allowing it to avoid a full application for abandonment. There are numerous serious matters at issue in the SJVR Petition, issues to which the company has given far too little attention at the expense of Tulare County. This failure should not be rewarded.

(11) The City of Lindsay and Tulare Frozen Foods have, in their separate protest of the SJVR Petition for Exemption in the related Sub No 8X case (see Docket No AB-398, Sub No-8X filing dated April 4, 2008), raised the issue of whether Union Pacific Railroad Company ("UP") would have common carrier obligations if the SJVR Petition were to be approved. It would seem UP should participate in this abandonment as well as that one, as no one can be expected to know how to respond if their position and obligations are unknown. Tulare County has, for example, indicated its intent to file an Offer of Financial Assistance in the event of an abandonment and desire for a trail condition in the event this is unsuccessful, but how will this be addressed without knowing the status of the right-of-way? SJVR has barely acknowledged a lease with UP and has provided no details on terms or obligations that may devolve to SJVR in the event of an abandonment, except to say on page 3, "UP will be responsible for the disposition of the underlying real estate." Federal regulations at 49 CFR 1152.27(a)(3) require the availability of "traffic, revenue, and other data necessary to determine the amount of annual financial assistance that would be required to continue rail transportation over that part of the railroad line." Despite SJVR's statement on page 11 of its Rebuttal that it has provided the information necessary for an Offer of Financial Assistance to be filed, it has not done so. There is simply not enough information in the application for any responsible party to know the current legal status of the operation, determine the UP's willingness to lease to another operator, submit an OFA or even know the proper procedure for applying for a trail condition under these circumstances, where the party owning the real estate is not party to the abandonment.

(iii) Page 6 of SJVR's Rebuttal includes a single small paragraph that glosses over the omission of the Ultra spur line in SJVR's original filing, concluding it "does not know TVRC's plans for the line," which a reasonable person might have thought it would have tried to learn in preparing an abandonment petition. Interestingly, however, SJVR identifies Britz Fertilizer (located on the Ultra Spur) as a former customer, one to which it apparently applied the \$950 surcharge that effectively ended all business on the line. Moreover, TVRC filed an application, on May 25, 2007, under the Feeder Railroad Development Program to acquire from SJVR a 39.77-mile segment of the Exeter Branch, extending between milepost 259.4, near Exeter, and milepost 229.17, at Jovista, which section incorporates the Sub-No. 7X trackage. It did so in response to SJVR's imposition of the surcharge and offered to operate the entire trackage. SJVR filed a petition, on June 7, 2007, to reject this TVRC application. SJVR noted it provided service on TVRC line under an agreement that SJVR terminated in 2006, and indicated TVRC might not have any equipment to provide service over the line it proposed to acquire. It also made much of TVRC's lack of demonstrated financial responsibility to operate the line for three years and raised an additional objection that "TVRC has not demonstrated that the public convenience and necessity require the Board to order SJVR to sell the Line to TVRC." Significantly, SJVR also strongly argued in that case that Rebuttals should not be permitted, but that all information should come in with the application. Now it wants a different rule to apply. SJVR further stated that "prior to filing the Application, TVRC and SJVR were negotiating the purchase and sale of the Line." This raises the obvious questions of why SJVR has disclosed none of this in the current Petition for Exemption and what its motives are. It opposed TVRC's application to operate by saying TVRC wasn't prepared to operate and hadn't met its burden of proof and then proceeded in less than a year to itself propose abandonment of the line. Not identifying this spur and the consequences to its economic viability by abandonment of the SJVR line remains a serious omission of facts by SJVR in its original application. The abandonment of the SJVR line between Strathmore and Jovista would leave this spur isolated from the rest of the railroad system, effectively ending the viability of rail service on the Ultra spur. It is impossible to know even if TVRC received proper notice of the abandonment filing.

(iv) Footnote 12 on page 8 of the SJVR Rebuttal argues Tulare County's suggestion to abandon the line south of milepost 287.1 is inconsistent with its argument regarding economic growth in Tulare County. This indicates a profound lack of appreciation for the geography of the area. The 12 miles of railroad line south of Ducor run through agricultural land and one

community of 3,000 people with relatively little potential for rail use compared to the rest of the line (as correctly noted in the protest letter) The remaining 28 miles (not including the 5 mile Ultra spur) runs through two incorporated cities and 3 unincorporated communities with a total population of over 70,000

(v) SJVR contends, on page 6 of its Rebuttal, that rail use was already dropping before the most recent surcharge was reimposed but doesn't mention the effects on rail usage after the original June, 2000 surcharge was enacted, then repealed (only to later be reimposed) No rail use information for pre-2000 as compared to the 2000-2004 period was provided to evaluate the effects of the on and off-again surcharge. The original 2000 surcharge clearly drove away business that never came back between 2002 and the imposition of the latest surcharge in 2006 The volatility of pricing has still not been not adequately addressed in SJVR's rebuttal

(vi) SJVR suggests, on page 10 of its Rebuttal, that Tulare County's comments regarding line conditions on the two different segments was a challenge of its rehabilitation and maintenance costs and raised the specious issue of trespass during inspection Tulare County's comments were not intended as a challenge of Mr Garvin's estimates. Rather, they were offered in support of the obviously poorer condition of the southern portion of the line, something that any lay person can observe from inspecting the line from the public rights-of-way Given this poorer condition, Tulare County simply contends this segment might have been treated differently in the abandonment application. SJVR's attempt to portray this argument as something other than this obfuscates the real issue, namely SJVR's deliberate shunning of all business via an unreasonable surcharge that would then allow it to salvage the entire line and generate cash to pay debt, as the SJVR itself suggests on page 9 of its Rebuttal

(vii) Footnote 16 on page 9 of SJVR's Rebuttal acknowledges UP boxcar storage but then suggests the 200 ± boxcars would have been removed to another location if service had been requested This argument ignores the entire point, which is that SJVR may have made a deliberate decision to use the line of railroad south of Lindsay for boxcar storage and used the high surcharge on the portion below this section to ensure no regular freight business interfered with that non-freight business, a turning of the common carrier obligation on its head Moreover, this arrangement with UP, the owner of the underlying real estate to whom any operator would have to pay a lease fee, suggests there could well be a tradeoff involved with direct implications on operating costs SJVR has blithely dismissed the issue of the UP lease costs, integral to any Offer of Financial Assistance, by simply stating, on page 12 of its Rebuttal, that such an offer

would have to compensate UP without offering any information as to what this cost has been. If there is an offset of boxcar storage costs against the lease payment to UP, it should be disclosed, as similar arrangements could then extend to an offeror, reducing its operating costs and allowing it to cover costs while building rail traffic on other portions of the line.

CONCLUSION

For all the foregoing reasons, Tulare County respectfully requests the Board reject SJVR's Rebuttal and application to abandon the Line. As noted above, SJVR itself argued, in the matter of the TRVC's Feeder Line Application, that "an applicant must put in all its evidence in its opening case and not wait for rebuttal." Tulare County agrees and urges the Board to dismiss SJVR's motion for leave to file the Rebuttal along with the Rebuttal itself, which has already been filed.

Dated: April 28, 2008

Respectfully submitted for,

**Tulare County Economic Development Corporation
4500 S Laspina Street
Tulare, CA 93274**

AND:

**Tulare County Association of Governments
5961 S Mooney Boulevard
Visalia, CA 93277**

A handwritten signature in black ink, appearing to read 'Paul Saldana', is written over a horizontal line.

Paul Saldana,

President and Chief Executive Officer

Tulare County Economic Development Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Protest was served upon the following entities by overnight mail on April 28, 2008.

Louis E. Gitomer
Attorney for San Joaquin Railroad Company
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Townson, MD 21204-4022

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Paul Saldana,
President and Chief Executive Officer
Tulare County Economic Development Corporation

Date April 28, 2008